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In re Application of : DECISION ON PETITION
BOWER, et al. :
U.S. Application No.: 09/284,327 :
PCT No.: PCT/US98/26552 : UNDER 37 CFR 1.137(b)
Int. Filing Date: 14 December 1998 :
Priority Date: 16 December 1997 :
Attorney's Docket No.: GC516-2-US :
For: NOVEL EGIII-LIKE ENZYMES, DNA :
ENCODING SUCH ENZYMES AND METHODS :
FOR PRODUCING SUCH ENZYMES :

This decision is in response to applicant's "Petition Under 37 CFR 1.137(b) for Revival of Unintentionally Abandoned Application" filed 15 September 2000 in the United States Patent and Trademark Office (USPTO). The petition fee of \$1210.00 has been provided.

BACKGROUND

On 14 December 1998, applicant filed international application PCT/US98/26552 , which claimed priority of an earlier application filed 16 December 1997. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 24 June 1999. A Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 16 June 2000.

On 10 April 1999, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by authorization to deduct the requisite basic national fee as required by 35 U.S.C. 371(c)(1) from Deposit Account 07-1048 and an executed oath or declaration of the inventors as required by 35 U.S.C. 371(c)(4).

On 19 July 2000, applicant was mailed a "Notification of Abandonment" (Form PCT/DO/EO/909) indicating that applicant had failed to provide the full U.S. Basic National Fee by 30 months and that the application was abandoned as to the United States of America.

DECISION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional." and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

With regard to Item (1), a review of the records for Deposit Account 07-1048 reveals that at the time applicant authorized deduction of the appropriate filing fees (\$840.00 basic national fee and \$180.00 total claims in excess of 20) there were insufficient funds to cover such a deduction. The required reply is the payment of the Basic National Fee under 37 CFR 1.492(a). Applicant has authorized the deduction of this payment from Deposit Account 07-1048.

As to Item (2) the appropriate petition fee of \$1210.00 as required by 37 CFR 1.17(m) was submitted.

With regard to Item (3), applicant's statement that, "the entire delay in reviving the above-identified application was unintentional" is being interpreted to mean that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. If this is an incorrect reading of applicant's statement applicant should contact the PCT Legal Office immediately. Applicant's statement and the prompt filing of the petition satisfies the requirement of 37 CFR 1.137(b)(3).

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate. Further, a review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have been satisfied.

CONCLUSION

Applicant's "Petition Under 37 CFR 1.137(b) for Revival of Unintentionally Abandoned Application" is GRANTED.

As authorized, \$1020.00 will be deducted from Deposit Account 07-1048 for payment of the basic national fee and claims in excess of 20.

This application will be given an international application filing date of 14 December

1998 and a date of **10 April 1999** under 35 U.S.C. 371.

This application is being returned to the DO/EO/US for processing in accordance with this decision, namely, the mailing of a NOTIFICATION OF ACCEPTANCE UNDER 35 U.S.C. 371 (Form PCT/DO/EO/903).



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